



May 28, 2010

Mary Rupp, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428

Re: 12 CFR Parts 701, 708a, and 708b Fiduciary Duties at Federal Credit Unions;  
Mergers and Conversions of Insured Credit Unions

The Board proposal seeks to clarify the fiduciary duties of federal credit union directors, and to provide additional provisions for insured credit union conversions and mergers, which are intended to protect member rights and ownership interests.

CUAO applauds NCUA in its proposal to clarify board member fiduciary duties and set standards to protect credit union members during mergers and conversions of insured credit unions and we appreciate the opportunity to provide input on these important issues. We do, however, take exception to some of the points the board proposes and address these concerns here.

The Credit Union Association of Oregon (CUAO) is a nonprofit, professional trade association representing Oregon's state, community, and federally chartered credit unions. Since 1936, CUAO has been at the forefront of credit union issues at the state, regional, and national level, and provides a voice for Oregon's 1.4 million credit union members on issues impacting credit unions at a local level.

The Board's proposed rulemaking has four parts:

1. A new §701.4 addresses the duties of federal credit union directors in managing the affairs of their credit unions.
2. Revisions to part 708a address issues related to credit union conversions to mutual savings banks.
3. A new subpart to part 708a sets forth the procedures for merging a credit union into a bank.
4. Revisions to the existing provisions of part 708b address issues related to credit union mergers with other credit unions and the termination of federal deposit insurance.

#### **§ 701.4 General authorities and duties of federal credit union boards of directors.**

Currently, an FCU's board must look to state statutory and case law to determine the scope of its fiduciary duties to members and the standard of care required. Statutory law and case law vary from state to state causing confusion for FCUs and a lack of uniformity between FCUs in different states.

CUAO generally agrees that having a uniform regulatory standard of care for FCUs may be useful to eliminate such confusion and make it easier for FCU boards to fulfill their duties to members. CUAO supports this move toward uniformity of fiduciary duties of FCUs.

The proposed rule applies to federal credit unions only, and not to state chartered federally-insured credit unions.

CUAO believes uniformity would be best served and more readily measured if this rule was applied to all federally insured credit unions.

The proposal provides that management of each FCU is vested in its board of directors who can delegate operational function but not the responsibility for operations. The proposal further provides that an FCU director must:

- Carry out his or her duties in good faith, in a manner reasonably believed to be in the best interests of the membership of the federal credit union, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;
- Administer the affairs of the federal credit union fairly and impartially and without discrimination in favor of or against any particular member;
- Understand the federal credit union's balance sheet and income statement and, ask, as appropriate, substantive questions of management and the internal and external auditors; and
- Direct the operations of the federal credit union in conformity with the requirements set forth in the Federal Credit Union Act (Act), the NCUA's regulations, other applicable law and sound business practices.

Proposed paragraph (b)(3) requires that each board director be financially literate. The directors must have a working familiarity with basic finance and accounting practices, (including the ability to understand the credit union's balance sheet and income statement and to ask, as appropriate, substantive questions of management and the internal and external auditors) or become financially literate within a reasonable time, not to exceed three months, after his or her election or appointment to the board of directors.

While CUAO generally supports the value of having a board made up of financially literate volunteers, familiar with finance and accounting standards, NCUA does not indicate how this requirement is to be measured and carried out. Additionally, it seems there should be some level of tying the scope of such a requirement to the size and complexity of the credit union.

The proposal also amends the indemnification provisions of NCUA's rules to prohibit a federal credit union from indemnifying officials and employees for liability from misconduct that is grossly negligent, reckless, or willful in connection with a decision that affects the fundamental rights of members.

The limitations as proposed need some serious reconsideration. We are concerned with the impact this provision will have on the ability of our credit unions to replace their

outgoing board members. Especially at this time when we are seeing turnover of longstanding board members and finding it already difficult to recruit new volunteers able to meet the increased responsibilities. A potential volunteer is already somewhat confused by the extent of their actual personal liability. Do not over regulate the ability of our credit unions to provide a level of personal protection to their volunteers.

NCUA is requiring more and more from our credit union board of directors. Consideration should be given to allowing the ability for credit unions to compensate board members, to some degree. While we certainly do not wish to compromise the value of our industry's unique volunteer governance, we do feel there is room to provide more benefit to the volunteer for their service to the credit union and the members they represent.

This can be done without actual pay for service. A major roadblock in finding qualified board members is the fact that any time they spend away from work to attend to credit union business, complete continuing education, and the like, is borne by that volunteer. They must utilize their personal vacation time away from work to meet the ever increasing demands and education requirements of their volunteer service. The Board should consider the possibility of reimbursing volunteers for all of their actual expenses, including reimbursing for vacation allocation spent.

Oddly enough, this proposal does not address the fiduciary duties, education requirements and experience level of the supervisory committee members. Our thought is that the Board should consider an equal level of requirements and duty of care for the volunteers of the committee as well.

#### **Credit union conversions and mergers**

CUAO supports reasonable controls ensuring transparency and integrity of the voting process. Our credit union members deserve a system of controls and oversight during this complex process. However, we caution NCUA to consider the added expense and increased time to complete mergers and conversions and urge you again to not over regulate this process.

Thank you for affording us the opportunity to comment, and I sincerely appreciate your consideration.

If you have any questions or would like further information, please feel free to contact me at the CUAO office, 800-688-6098 ext 214.

Respectfully Submitted,



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